**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

**MICHAEL PATTON; PATRICK JOHNSON:
CHARTAVIAUNCA ODOM; DAWATHA PICKENS:
MAMIE TURNER; REGINALD EVANS;
CHARLES EVERETT; and DEANTHONY JONES** **PLAINTIFF**

VS. **CAUSE NO.: 2:16-cv-186-KS-MTP**

**WAYNE COUNTY, MISSISSIPPI (same entity
as Sheriff of Wayne County, Mississippi, in his
Official capacity) and
JODY ASHLEY in his individual capacity** **DEFENDANTS**

**JODY ASHLEY'S MEMORANDUM OF AUHTORITIES IN
SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS.**

Comes now, Jody Ashley, by and through counsel, and pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, submits his Memorandum of Authorities in Support of Motion for Judgment on the Pleadings, as follows:

INTRODUCTION

This matter arises out of Plaintiffs' former employment with the Wayne County Sheriff's Department. According to Plaintiffs' Complaint, all of them were employed with the Sheriff's Department in 2015. *CM/ECF Doc. No. 1,* ¶ 14. In 2015, Jody Ashley, who was not the Sheriff who employed Plaintiffs, ran for Sheriff of Wayne County. *Id.* at ¶ 13. Ashley won the election and became Sheriff in January, 2016. *Id.*

According to Plaintiffs' Complaint, in December 2015, Ashley who was not yet Sheriff, instructed that all Plaintiffs be terminated from employment with Wayne County. *Id*. at ¶ 14. Plaintiffs, who are all African American, assert that Ashley, who is Caucasian, terminated their employment based on their race.

CLAIMS

On November 3, 2016, Plaintiffs filed suit against Wayne County, Mississippi and Sheriff Jody Ashley, individually, asserting claims under Title VII and Section 1983. *CM/ECF Doc. No. 1*. Plaintiffs assert the Section 1983 claim against Ashley in his individual capacity.

STANDARD OF REVIEW

Rule 12(c) of the Federal Rules of Civil Procedure governs this Motion inasmuch as a responsive pleading has already been filed. *CM/ECF Doc. No. 5*; *see e.g., Jones v. Greninger,* 188 F.3d 322, 324 (5th Cir.1999); *Robertson v. Mullins*, 2:12CV57-MPM-DAS, 2013 WL 1319759, at *1 (N.D. Miss. Mar. 26, 2013)(same). The standard for addressing a motion for judgment on the pleadings under Rule 12(c) is the same as that for addressing a motion to dismiss under Rule 12(b)(6). *In re Great Lakes Dredge & Dock Co.*, 624 F.3d 201, 209–10 (5th Cir. 2010). Thus, to survive moving Defendants' Motion, Plaintiff's Complaint must provide the grounds for entitlement to relief—including factual allegations that when assumed to be true "raise a right to relief above the speculative level." *Cuvillier v. Sullivan*, 503 F.3d 397, 401 (5th Cir. 2007)(quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 553-56 (2007)). The complaint must allege "sufficient factual matter…to state a claim that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 556. A court should not accept "threadbare recitals of a cause of action's elements, supported by mere conclusory statements," which "do not permit the court to infer more than the mere possibility of misconduct." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009). As outlined below, the Plaintiff's federal claim fails to meet the heightened pleading standard.

ARGUMENT

In his Answer, Sheriff Ashley raised the defense of qualified immunity. *CM/ECF Doc. No. 3*. Law enforcement officials, "like other public officials acting within the scope of their official duties, are shielded from claims of civil liability, including § 1983 claims, by qualified immunity." *Morris v. Dillard Dept. Stores, Inc.*, 277 F.3d 743, 753 (5th Cir. 2001). A law enforcement officer is entitled to the cloak of qualified immunity "unless it is shown that, at the time of the incident, he violated a clearly established constitutional right." *Mangieri v. Clifton*, 29 F.3d 1012 (5th Cir. 1994). Significantly, qualified immunity provides "ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

In assessing a claim of qualified immunity, courts should apply a two-part analysis. The threshold question is "whether Plaintiff's allegations establish a constitutional violation." *Hope v. Pelzer*, 536 U.S. 730, 736 (2002). If "no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity." *Saucier v. Katz*, 533 U.S. 194 (2001);

see also *Pearson v. Callahan*, 129 S.Ct. 808 (2009)("order of battle" delineated in *Saucier* is no longer mandatory). However, "if a violation could be made out, the next sequential step is to ask whether the right was clearly established." *Id.* at 201. The "relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted." *Id.* at 202.

The purpose of qualified immunity is to protect public officials from the "burden of fighting lawsuits which arise from the good-faith performance of their duties." *Wren v. Towe,* 130 F.3d 1154, 1159 (5th Cir. 1997). Thus, qualified immunity "is not just immunity from judgment, but rather, is immunity from all aspects of suit." *Jacques v. Procunier*, 801 F.2d 789, 791 (5th Cir. 1986). The qualified immunity issues in a case are "threshold" issues and must be dealt with as expeditiously as possible and prior to resolving non-immunity issues. See *Harlow v. Fitzgerald*, 102 S.Ct. 2727, 2728 (1982); see also L.U. Civ R. 16.1(B)(4).

To fulfill the protective purpose of qualified immunity, the Fifth Circuit has long required more than mere "notice pleadings" when a claimant asserts a Section 1983 claim against an official in his individual capacity. *Elliott v. Perez,* 751 F.2d 1472 (5th Cir. 1985). More specifically, when an officer raises the qualified immunity defense, a complaint "must present more than bald allegations and conclusory statements." *Wicks v. Mississippi State Employment Svcs.*, 41 F.3d 991, 995 (5th Cir. 1995). In fact, a plaintiff must "allege with sufficient particularity all facts establishing a right to recovery, including facts which negate the official's immunity defense." *Wicks*, 41 F.3d at 995; see also *Nunez v. Simms*, 341 F.3d 385 (5th Cir. 2003)(holding that heightened pleading in qualified immunity cases requires plaintiffs rest complaint on more than conclusions alone); *Foster v. City of Lake Jackson*, 28 F.3d 425 (5th Cir. 1994)(burden of negating qualified immunity defense lies with plaintiff). Plaintiffs "cannot be allowed to rest on general characterizations, but must speak to the factual particulars of the alleged actions." *Floyd v. City of Kenner*, 351 Fed. Appx. 890, 893 (5th Cir. 2009)(citing *Schultea v. Wood*, 47 F.3d 1427, 1433-34 (5th Cir. 1995)). Furthermore, "[h]eightened pleading requires allegations of fact focusing specifically on the conduct of the individual who caused the plaintiff's injury." *Reyes v. Sazan*, 168 F.3d 158, 161 (5th Cir. 1999). Plaintiffs' Complaint does not meet the heightened pleading standard.

In this case, Plaintiffs' Complaint merely alleges that the "action is authorized by…and made pursuant to the 14th Amendment to the United States Constitution." *CM/ECF Doc. No. 1*, ¶ 12. Plaintiff fails to further specify the nature of the claim. From the boilerplate factual allegations provided, it appears that Plaintiffs intend to pursue an equal protection claim; however, as noted above, the nature of the claim remains unspecified. If the claim is a claim for a deprivation of equal protection on the basis of race, Plaintiffs "must demonstrate the existence of "a racially discriminatory purpose" and not just "a racially disproportionate impact." *Washington v. Davis*, 426 U.S. 229, 239 (1976). Plaintiffs' Complaint does not allege with sufficient particularity all facts establishing a right to recover for an Equal Protection claim. Simply asserting that Plaintiffs are all black, Sheriff Ashley is white and that all Plaintiffs were terminated is insufficient. Plaintiffs fail to assert facts underlying their claim for a discriminatory purpose.

Significantly, the Equal Protection Clause is essentially a direction that all persons similarly situated should be treated alike. *Brennan v. Stewart*, 834 F.2d 1248, 1257 (5th Cir.1988) (citing *City of Cleburne, Tx. V. Cleburne Living Center*, 473 U.S. 432, 105 S.Ct. 3249 (1985)). Plaintiffs' Complaint does not provide specific allegations as to how each individual defendant was "similarly situated" with another and was treated differently. Bald, conclusory allegations and collective allegations are insufficient to meet the heightened pleading standard. *Wicks*, 41 F.3d at 99; see also *Bivens v. Forrest Cnty.*, No. 2:13-CV-8-KS-MTP, 2015 WL 1457529, at *7 (S.D. Miss. Mar. 30, 2015)(holding that "collective allegations" against multiple defendants are insufficient to meet the heightened pleading standard).

Finally, personal involvement in the constitutional violation alleged is required to overcome qualified immunity and, here, Plaintiffs have provided only general allegations against Sheriff Ashley which are not tired directly to the alleged employment and/or termination of each individual Plaintiff. *Thompson v. Steele*, 709 F.2d 381, 382 (5th Cir. 1983)("Personal involvement is an essential element of a civil rights cause of action.").

Here, Plaintiffs should be required to submit a *Schultea* Reply specifying how Sheriff Jody Ashley was involved in the employment and termination of each Plaintiff. Furthermore, each Plaintiff must provide factual allegations sufficient to undergird his/her Fourteenth Amendment claim—whatever that claim may be.

WHERFORE PREMISES CONSIDERED, for all of the aforementioned reasons asserted and authorities cited hereinabove and in the movants' Motion for Judgment on the Pleadings, the Plaintiff should be required to submit a *Schultea* Reply as specified above.

DATE: December 6, 2016.

Respectfully submitted,

JODY ASHLEY

BY: */s/William R. Allen*
One of His Attorneys

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CERTIFICATE

I, the undersigned of Allen, Allen, Breeland & Allen, PLLC, hereby certify that on this day, I electronically filed the foregoing Jody Ashley's Memorandum of Authorities in Support of Motion for Judgment on the Pleadings with the Clerk of the Court which gave notice of the same to:

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The 6th day of December, 2016.

/s/William R. Allen
OF COUNSEL